

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA :
:
v. : 1:23CR92-1
:
MICHAEL DENARD BROOKS :
:

FACTUAL BASIS

NOW COMES the United States of America, by Sandra J. Hairston, United States Attorney for the Middle District of North Carolina, through the undersigned Assistant United States Attorney, and as a factual basis under Rule 11 of the Federal Rules of Criminal Procedure, states as follows:

On November 2, 2022, agents from the Bureau of Alcohol, Tobacco, Firearms and Explosives were conducting a controlled purchase of suspected fentanyl from Heriberto Perez, aka Alexi Santana-Cruz, aka “Momo,” aka “Mo” (hereinafter “Perez”) in Winston-Salem, North Carolina. Rather than purchasing the suspected fentanyl with U.S. Currency, the agents had previously arranged to buy the suspected fentanyl with 1,080 cartons of contraband Newport cigarettes. In total, the agents arranged to exchange 10,800 packs or 216,000 individual cigarettes for a quantity of fentanyl.

Undercover agents met Perez at a predetermined location near the intersection of North Main Street and Northwest Boulevard in Winston-Salem

to travel to a nearby a storage unit facility to view the cigarettes and to rent a U-Haul truck. The predetermined location was just down the street from the residence of MICHAEL DENARD BROOKS's brother, Joseph Franklin Brooks. Agents were aware that Joseph Franklin Brooks had been identified as a supplier of fentanyl in Winston-Salem. Once purchased, the cigarettes were to be transported to Philadelphia, Pennsylvania.

MICHAEL DENARD BROOKS accompanied Perez and the undercover agent to the storage unit facility to view the cigarettes and to rent the U-Haul truck. Perez and the undercover agent engaged in extensive discussions about the number of contraband cigarette packs, the fact that none of the cigarette packs bore evidence of the payment of any applicable State or local cigarette taxes, and the profits that could be derived from the resale of the contraband cigarettes in Philadelphia, Pennsylvania.

The 216,000 cigarettes in this case are "contraband cigarettes" within the definition of "contraband cigarettes" as defined in Title 18, United States Code, Section 2341(2).

While at the storage unit facility, MICHAEL DENARD BROOKS observed the "contraband cigarettes" being discussed and understood that Perez was obtaining the "contraband cigarettes" in exchange for something of value. MICHAEL DENARD BROOKS also waited in an undercover vehicle

with an undercover agent while Perez rented the U-Haul truck for transporting the “contraband cigarettes” to Philadelphia, Pennsylvania for sale.

After the U-Haul truck was rented and Perez had arranged to pay a second undercover agent to load the “contraband cigarettes” for him, the first agent drove Perez and MICHAEL DENARD BROOKS back to Joseph Franklin Brooks’ apartment. Both Perez and MICHAEL DENARD BROOKS then exited the undercover vehicle, but PEREZ soon returned with a blue grocery bag. The undercover agent and Perez then traveled, without MICHAEL DENARD BROOKS, back to the storage unit facility. There, Perez provided the undercover agent with the suspected fentanyl and took possession of the “contraband cigarettes.”

The Commonwealth of Pennsylvania has a \$2.60 per pack tax on cigarettes and the City of Philadelphia has an additional \$2.00 per pack tax on cigarettes, totaling a tax of \$4.60 per pack. Here, the amount of tax evaded for 10,800 packs of “contraband cigarettes” is \$49,680. This amount, pursuant to U.S.S.G. § 2E4.1(a)(2) and the Tax Table as set out in U.S.S.G. § 2T4.1(E), calls

for an Offense Level of 14 points, before the impact of any reduction pursuant to U.S.S.G. § 3E1.1(a).

This, the 7th day of March 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel of record.

Mark A. Jones, Esquire

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